

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5467**

1. Opening of Meeting:

The Appeals Board convened at 10:30, March 14, 2006 in Sacramento, with Chair Joan M. Borucki presiding.

2. Roll Call: Members

Present

Absent

Joan M. Borucki, Chair
Ann Richardson, Vice Chair
Virginia Strom-Martin
Jack Cox
Don Novey

x
X
x
x
x

3. Approval of the Minutes:

The February 14, 2006 minutes were approved by all members except Member Cox, who did not attend the February Board meeting.

4. Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief Administrative Law Judge Jay Arcellana reported on a meeting of the Presiding Administrative Law Judges and Legal Support Supervisor IIs last month in Los Angeles. Items covered in the meeting included workload and budget. Board member Strom-Martin was in attendance for part of the meeting. At the Chair's suggestion, they hope to schedule the next quarterly meeting on the same day as a Board meeting to make it more conducive for all Board members to attend.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the CUIAB has received new direction from Labor Agency on SARS (Secretary Action Requests). The directive provides that event planning is to obtain approval thorough the SARS process, with emphasis on justification, with pros and cons, and whether or not the event will have any effect on existing law or policies.

Labor Agency has also requested we submit a list of out of state trips. This is normal protocol and the list will include trips such as quarterly meetings of the Board of Governors, trips to attend meetings of the National Conference of Unemployment Insurance Appellate Boards, and National Judicial College training.

Executive Director/Chief Administrative Law Judge Jay Arcellana continued to report that the quality review of the agency in its fourth quarter met the federal standard, requires that 80% of all of our scores must be 85 or above. Our average score was 92%, the highest in the agency's history. Without question the training

efforts of Randy Petersen and the PALJs have worked out well and have paid off.

Board Member Novey inquired of the scoring methodology for the quality review. Executive Director/Chief Administrative Law Judge Jay Arcellana responded that cases are pulled at random, and sample size is rather small. Given the number of cases handled by California each year the sampling for the quality review is not statistically valid for California. As a result, "luck of the draw" can be a big factor in how we score, and consequently our scores can range widely from quarter to quarter. For example, a case handled by a retired annuitant called in for work after a lengthy non-work period could be one of those pulled for review, and have a significant negative impact upon our overall score.

7. Branch Reports:

a. Executive Director/Chief Administrative Law Judge Arcellana presented a PowerPoint on workload and budget. (Attachment A)

b. Deputy Chief ALJ, Appellate Operations Steve Angelides reported that the big news in AO is that in February registrations once again hit a new four year low. Because February is a short month it typically has about 250 fewer registrations than January. But this year February had 472 fewer registrations than January. This is the largest one month drop in registrations since September 2004, when registrations dropped 490 cases from the previous month. Aside from a temporary spike in registrations in January, four out of the last five months have set four year record lows in registrations.

Deputy Chief ALJ, Appellate Operations Steve Angelides continued to report that because they had three ALJ retirements last year, and despite heavy use of retired ALJ annuitants so far this year, dispositions have also dropped below average, but not nearly as low as our registrations, so the balance of open cases continues to gradually decline. In February they disposed of 1,160 cases, which is 93% of the fiscal year average. As a result the balance of open cases fell to 2,406, which is just below the fiscal year average. Along with the open balance, the case aging numbers were reduced slightly in February: the mean case age fell from 46 to 45 days, and the median case age fell from 42 to 41 days.

Deputy Chief ALJ, Appellate Operations Steve Angelides also reported that due to such factors as the resolution of the transcript issue, loans from the field, and overtime in December, January, and February, they have significantly reduced the number of unassigned cases, particularly unassigned long tax cases. There will always be some unassigned long tax cases in CTU, but we no longer have too many of them. Therefore we are not using overtime in CTU in March.

The normalization of the appeal rate in tax cases has also helped. You may remember that the appeal rate in tax cases peaked at 24.7% in August

2005. In February 2006 the appeal rate in tax cases was down to a more normal 14%, which is 91% of the fiscal year average.

Since the number of ALJ's in AO has dropped, we have to be much more selective with special assignments, and we are working diligently to wind down our remaining special assignments. By the end of March we hope we will be down to just one ongoing special assignment, which is a case involving jurisdiction and notice in 1253(c) cases.

Finally, Deputy Chief ALJ, Appellate Operations Steve Angelides reported that on the social scene, ALJ Ernie Schulzke's retirement luncheon will be on March 21, and everyone is invited.

c. Deputy Director, Administrative Services Branch Pam Boston made a PowerPoint presentation regarding the implementation of AB 124, 2004/05 Legislative Session, relating to equal employment opportunity. (Attachment B).

Chair Borucki stated that she recalled a recent court case out of Washington State that challenged the EEO laws for federally funded agencies. The court invalidated Washington's EEO programs, finding that there needs to be proof of the existence of a disadvantaged population before those programs could be implemented.

Deputy Director, Administrative Services Branch Pam Boston reported on the personnel front that the Agency hired three new employees, granted two promotions: Barbara Hill Strickland as the LSS I in Oakland and Ralyne Long as an SSM I in Planning and Program Management Branch, and had one separation.

Deputy Director, Administrative Services Branch Pam Boston reported on the following legislative changes under SB 899/2004:

- Employer has more control over the claim with the role of medical provider network
- Temporary Disability now has a 2 year limit or 104 weeks
- Medical Costs are reduced with the implementation of Utilization Review (medical treatments are reviewed by SCIF before approving)
- Chiropractic and Physical Therapy treatments were reduced to 24 per life of the claim
- Employer can only be liable for the portion of the disability caused by the work related injury
- Changed permanent disability benefits and mandates use of the American Medical Associations guidelines to define PD

As a result of those changes and other factors, CUIAB has experienced a significant decrease in claims, as follows:

- Claims filed in 2003—75

- Claims filed in 2004—36
- Claims filed in 2005—27

Finally, Deputy Director, Administrative Services Branch Pam Boston reported with regard to the ALJ exam that there would be a make-up examination March 23 for those who were unable to make the original testing date.

d. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that once a year the Department of Labor conducts a secondary quality review of cases that every state has already reviewed. Jeanette Perez of the Planning and Program Management Branch has just sent our cases back to Washington DC and this quality review will start next Monday and run for two weeks. Hugh Harrison was nominated to be part of the quality review but was not selected, probably because he was a participant last year. No state can review their own cases and so there are a variety of states that are selected as well as Department of Labor regional staff that check to see if we are grading or providing a review that is consistent with how they view the scores. One of the problems with this quality review is that every quarter our computer randomly selects 40 cases for quality review, so we have 160 cases at the end of the year. Of those 160, only 20 are sent to the Department of Labor. The 160 is not a true statistical sampling of at least 200,000 UI cases we decide each year, and that coupled with the secondary review means anything can happen. So the CUIAB is very fortunate that all of the cases going back there this year had good scores.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons further reported that the second bi-annual Dymally-Alatorre language survey has begun. The purpose of the survey is to determine each agency's number of non-English speaking clients. This year, the survey is being conducted in two non-consecutive weeks. The first week, February 22 through March 3, is complete, and the second week begins this week and runs through March 17. There will be a tally of the statistics and a report sent to the State Personnel Board. Martha Silva, who is the bilingual services coordinator for the Planning and Program Management Branch, will prepare that report. CUIAB was the only entity last year in the Labor and Workforce Development Agency who submitted their report to the SPB on time, and further had no deficiencies.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that the committee for the rewrite of the hearing information pamphlet met in February and will meet again next week. They are using a software program that keeps them continually advised as they rewrite the pamphlet information on the grade level that is being achieved. Once the new pamphlet is prepared, it will be circulated for comment. At that point we will decide if an outside vendor needs to be brought in to judge readability. An interesting note--P&PM was discussing this project with

EDD's public affairs constituent in early February, and was told they never use vendors for readability purposes.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons also reported that one of the pluses to a drop in the workload is that it gives P&PM branch an opportunity to provide training to staff. Currently our software trainers are providing hands-on training in the offices to the Administrative Law Judges. The training was provided to the Inland Office of Appeals on February 7th and in Los Angeles Office of Appeals on February 23rd. The training program is tailored to meet the needs of each office.

Lastly, Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported the appointment of Ralyne Long as a Staff Services Manager over the Strategic Planning unit in the P&PM branch.

5. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported with regard to litigation that there were three new cases filed last month and five cases closed, with the board being affirmed in all five of those cases.

Chief Counsel Ralph Hilton also reported that the board member workload was at about 370 cases with the exception of one board member who was on vacation. The average was around 21 per day per board member, three less than average but still enough to keep the members busy.

10. Public Comment:

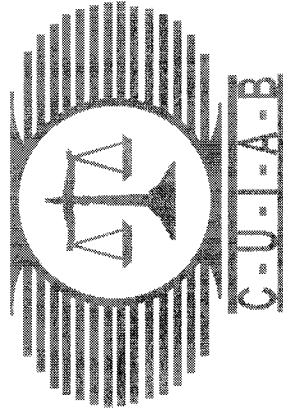
There was no public comment.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board went into closed session.

Field Operations

Quarterly Workload Report



March 14, 2006 Board Meeting

“Not So Quarterly Report”

- Low workload levels have prompted an earlier quarterly report than usual. Current workload levels are the lowest in 5 years.
- We anticipate a drop in resources once the May
Revise is published.
- As a result, a number of policy decisions have been made to avoid going over budget and to avoid staff layoffs.

ALL PROGRAMS VERIFICATIONS

QUARTERLY COMPARISONS

ALL PROGRAMS	June 04 July 04 Aug 04	Sept 04 Oct 04 Nov 04	Dec 04 Jan 05 Feb 05	Mar 05 Apr 05 May 05	June 05 July 05 Aug 05	Sept 05 Oct 05 Nov 05	Dec 05 Jan 06 Feb 06
VERIFICATIONS	73,061	57,658	54,815	62,838	63,242	58,557	55,198
Case Change from Previous Quarter		-15,403	-2,843	8,023	404	-4,685	-3,359
Percent Change from Previous Quarter		-21%	-5%	15%	1%	-7%	-6%

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ALL PROGRAMS	June 04	Sept 04	Dec 04	Mar 05	June 05	Sept 05	Dec 05
	July 04	Oct 04	Jan 05	Apr 05	July 05	Oct 05	Jan 06
	Aug 04	Nov 04	Feb 05	May 05	Aug 05	Nov 05	Feb 06
DISPOSITIONS	73,442	69,741	64,342	56,700	60,100	59,480	62,369
Case Change from Previous Quarter		-3,701	-5,399	-7,642	3,400	-620	2,889
Percent Change from Previous Quarter		-5%	-8%	-12%	6%	-1%	5%

ALL PROGRAMS

VERIFICATIONS TO DISPOSITIONS

QUARTERLY COMPARISONS

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DISPOSITIONS	73,442	69,741	64,342	56,700	60,100	59,480	62,369
Case Change	381	12,083	9,527	-6,138	-3,142	923	7,171
Percent Change	1%	17%	15%	-11%	-5%	2%	11%

Staffing Levels

QUARTERLY COMPARISONS

STAFFING LEVELS	June 04 July 04 Aug 04	Sept 04 Oct 04 Nov 04	Dec 04 Jan 05 Feb 05	Mar 05 Apr 05 May 05	June 05 July 05 Aug 05	Sept 05 Oct 05 Nov 05	Dec 05 Jan 06 Feb 06
ALJs	184.1	179.3	174.6	168.1	169.4	169.8	164.5
Position Change		-4.8	-4.8	-6.5	1.3	0.4	-5.3
Percent Change		-3%	-3%	-4%	1%	0%	-3%
SUPPORT	279.8	270.8	270.1	266.6	262.4	256.3	260.7
Position Change		-9.1	-0.7	-3.5	-4.2	-6.2	4.4
Percent Change		-3%	0%	-1%	-2%	-2%	2%
TOTAL	464.0	450.1	444.6	434.7	431.9	426.1	425.2
Position Change		-13.9	-5.4	-9.9	-2.9	-5.8	-1.0
Percent Change		-3%	-1%	-2%	-1%	-1%	0%

Workload Trends

- Verifications for the past 5 months have averaged 18,000
 - This is a drop of 1,000 on average per month for the fiscal year
 - This is a drop of 1,700 on average per month for the past calendar year
- Dispositions for the past 5 months have averaged 20,500
- The projected backlog is at 3 weeks for uncalendared cases
 - The offices are current with verifications
- Tax workload dropped along with UI and DI
 - The Tax workload for February was only $\frac{1}{2}$ of the fiscal year average
 - Dispositions exceeded verifications for the 6th straight month
- March will be a critical month for 2 reasons
 - Due to the large number of work days, especially following February
 - Historically, March has produced large numbers of verifications

Expenditures and Surplus

TWO FISCAL YEAR COMPARISONS

	<u>2003-04</u>	<u>2004-05</u>
Personnel Expenditures	\$ 39,769,884	\$ 40,708,077
OE&E Expenditures	\$ 15,061,515	\$14,339,755
Surplus Spent	\$ 3,057,392	\$ 2,143,784
Surplus Returned	\$ 9,611,577	\$ 2,009,241
TOTAL SURPLUS EARNINGS	\$ 12.6 million	\$ 4.1 million

Flexible Cost Items

- Personnel usage
 - Retired Annuitant ALJs
 - 10.2 position equivalents
 - \$1,099,020 salary and wage cost
 - Overtime
 - \$108,000 for the last 6 months
 - Lump sum vacation payouts
 - \$345,000 for the last 6 months
- Facilities
 - HQ annual lease costs \$6,090,318
 - OS annual lease costs \$ 263,002
- Travel
 - \$845,000 projected for the fiscal year

Policy Decisions

- With rare exceptions, retired annuitant ALJs are no longer being calendared
 - This equates to 10.2 fulltime positions
- Elimination of team calendars
- ALJs in low workload offices will be loaned to offices with high workload
- ALJs with excess vacation hours will be required to liquidate those balances
- Renewed emphasis on liquidating tax workload
- Regional training sessions have been scheduled
- Review of all facilities
 - Leases for under utilized outstations will be downsized or cancelled
- Freeze on ALJ hires



No Need To Panic

- A number of retirements are anticipated
- There is sufficient workload to support staffing levels
- For the past 5 years CUIAB has generated millions of dollars in surplus earnings
- For fiscal year 2006-07, CUIAB projects at worst a break even year, and with luck, a modest surplus of at least \$1.00

EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION



Civil Rights Act of 1964

- Achieve equality of employment opportunities.
- Permits affirmative action programs.
- Removal of artificial, arbitrary, and unnecessary barriers to employment.
- The Equal Opportunity Act of 1972 extended the protections of the Civil Rights Act of 1964 to public employees.
- State required Departments to develop Affirmative Action Goals and Timetables.

Proposition 209

- In 1996 Proposition 209 was enacted.
- The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting.

Proposition 209 (cont).

- Limitations Placed on Affirmative Action:
 - Prohibits granting of preferences based on race or gender in public employment
 - Selective certification prohibited.
 - Targeted or focused recruitment prohibited.
 - Employment goals based on race or gender prohibited.

Assembly Bill 124 (Dymally)

- Effective January 1, 2006
- California remains committed to equal employment opportunity, despite the passage of Proposition 209.
- State Departments still have an obligation to collect statistical data on the composition of their workforces, and to identify, report and analyze the underutilization of racial, gender, and ethnic groups.

ASSEMBLY BILL 124 (cont.)

- Defines the roles and responsibilities of the State Personnel Board and each State Department to ensure that equal employment opportunity exists not only in law, but in practice within civil service.
- Appoint EEO Officer at the Staff Services Manager level.

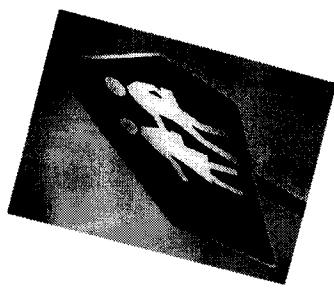


Assembly Bill 124 (cont.)

- Annually submits to the State Personnel Board by July 1 the following:
 - Report identifying underutilization of race/ethnic and gender groups, and an action plan for eliminating non-job-related employment barriers;
 - Annual evaluation of upward mobility program and upward mobility employment goals;
 - An annual departmental goal for persons with disabilities.

Assembly Bill 124 (cont.)

- Establish a Disabled Advisory Committee within each Department.
- Broad recruitment efforts, Limited Examination and Appointment Process (LEAP).
- Conduct Diversity/Sensitivity Training.
- Department EEO Officer should participate in the Upward Mobility Program.



Action Steps

- Recruit a Staff Service Manager to serve as the EEO Officer.
- EEO Officer will be involved in Upward Mobility Program.
- Meet regularly with Executive Director on EEO issues.
- Utilize the Limited Examination Appointment Process (LEAP) list.
- Prepare Annual Departmental Workforce Analysis.

Action Steps (cont.)

- Establish a Disability Advisory Committee within CUIAB.
- Outreach programs for open exams are broad and inclusive.
- Review current Board Policy on Affirmative Action and Equal Employment Opportunity.